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Aniplex Inc., and Toho Co., Ltd

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Ex Parte Application of
Aniplex Inc., a Japanese corporation, and
Toho Co., Ltd., a Japanese corporation,
Applicants.

Case No.:

**DECLARATION OF HIROYUKI
NAKAJIMA IN SUPPORT OF
APPLICANTS' *EX PARTE*
APPLICATION FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782
AUTHORIZING DISCOVERY FOR
USE IN FOREIGN PROCEEDINGS**

1 I, Hiroyuku Nakajima, declare as follows:

2 1. I am a Japan qualified attorney (*bengoshi* in Japanese), registered to
3 practice law in Japan, and I am an attorney at Tokyo Flex Law Office which is located at
4 Yotsuya 1-20 Tamagawa Building 3F, Shinjyuku-ku, Tokyo Japan. In Japan, I represent
5 applicants Aniplex Inc. (“Aniplex”) and Toho Co., Ltd. (“Toho”) (collectively,
6 “Applicants”), both of which are Japanese corporations engaged in the business, amount
7 other things of producing and releasing “anime” TV series (i.e., various animated,
8 Japanese-language television series).

10 2. I have personal knowledge of the facts set forth in this Declaration and, if
11 called as a witness, could and would testify competently to such facts under oath.

12 3. In preparing this declaration, I have reviewed the evidence that is being
13 submitted concurrently herewith, and my opinion below is based upon those documents
14 or facts that I have been made aware of.

16 4. I submit this declaration in support of the Ex Parte Application by
17 Applicants for an Order Pursuant to 28 U.S.C. § 1782 Authorizing Discovery for Use in
18 Foreign Proceedings (hereinafter “Application”). The Application is for an Order
19 authorizing a subpoena to X Corp. (formerly known as Twitter) (“X”) for information
20 about the identity of the anonymous person(s) behind twelve accounts on X (the
21 “Anonymous Individuals”). Those twelve X accounts were used by the Anonymous
22 Individuals to post images on X from then-unreleased versions of episodes of Japanese-
23 language, anime TV series, without Applicants’ authorization, in violation of Japanese
24 copyright law and of Applicants’ rights under that law.

5. I was consulted by and advised Applicants about: (a) filing civil lawsuits in Japan against the Anonymous Individuals who made the subject X posts; and (b) discovering the true identity of the Anonymous Individuals in order to be able to file those civil lawsuits.

6. The concurrently filed declaration of Yuma Takahashi and Koji Higashi (“Takahashi Declaration” and “Higashi Declaration,” respectively, and collectively the “Declarations”) sets forth the details about the anime TV episodes, the infringing posts, and the facts showing that the images posted by the 12 X users in twitter posts on X contained images that had not been released to the public, and as to which the postings were therefore unauthorized, and violated Applicants’ rights under Japanese copyright law.

7. The Declarations identifies the twelve infringing X accounts (the “X Accounts”):

“@WERLeaks”	“@msthshra”
“@IDuckyx”	“@Nakayasee”
“@knyesta”	“@SaaraAdam21”
“@Snowz7x”	“@seveninone71”
“@jobisky”	“@SinzsSzn2”
“@Root25257968”	“@mamutchiq2030”

8. I am informed and believe that “X” (formerly known as Twitter)” is owned and operated by X Corp. Based upon Business Search results on the California

1 Secretary of State's website, the principal office of X Corp. is located at 1355 Market
2 Street, Suite 900, San Francisco, CA 94103; attached as Exhibit 1 is a true and correct
3 copy of a screenshot of the first page of those online Business Search results.

4 9. Applicants have informed me that they would each like to and intend to
5 file civil lawsuits in Japan against the Anonymous Individuals, once the Anonymous
6 Individuals are identified, seeking damages for copyright infringement pursuant to
7 Article 709 of the Civil Code of Japan, injunctive relief pursuant to Article 112(1) of the
8 Copyright Act of Japan, and damages and injunctive relief pursuant to Articles 3(1) and 4
9 of the Unfair Competition Prevention Act of Japan.
10

11 10. In that regard, Article 709 of the Civil Code (Compensation for Damages
12 in Tort) provides: "A person that has intentionally or negligently infringed the rights or
13 legally protected interests of another person is liable to compensate for damage resulting
14 in consequence."
15

16 11. Article 112(1) of the Copyright Act of Japan (Right to Demand
17 Injunction) provides: "The author, copyright owner, owner of print rights, performer, or
18 owner of neighboring rights, may file a claim against a person who is infringing or who is
19 likely to infringe the moral rights of the author, the copyright, the print rights, the moral
20 rights of the performer, or the neighboring rights, for the cessation or prevention of such
21 infringement."
22

23 12. Article 3(1) of the Unfair Competition Prevention Act provides: "A person
24 whose business interests have been infringed or are likely to be infringed by unfair
25 competition may seek an injunction suspending or preventing the infringement against
26 the person that infringed or is likely to infringe such business interests."
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1 13. Article 4 of the Unfair Competition Prevention Act provides: “A person
2 who intentionally or negligently infringes on the business interests of another person by
3 unfair competition shall be liable for damages resulting therefrom. However, this Article
4 shall not apply to damages resulting from the use of a trade secret after the rights
5 prescribed in Article 15 have extinguished pursuant to the said Article.”
6

7 14. Based upon my experience as a lawyer qualified to practice law in Japan,
8 the Applicants will be able to make out a prima facie civil case against each of the
9 Anonymous Individual because the conduct described in the Declarations with regard to
10 the posting of unreleased images on X violated Article 709 of the Civil Code, is a basis
11 for injunctive relief under Article 112(1) of the Copyright Act, and is a basis for damages
12 and injunctive relief under the Unfair Competition Prevention Act, and therefore, the civil
13 lawsuits that will be filed upon discovering the true identity of the Anonymous
14 Individuals will withstand a motion to dismiss in a civil court of Japan.
15

16 15. No statute of limitation or other limitation in time to commence an action
17 will prevent the Applicants from filing civil lawsuits against the Anonymous Individuals.

18 16. However, in order to file a civil lawsuit in Japan, the true identity of a
19 defendant is necessary, because Japanese law does not allow for lawsuits to be filed
20 against anonymous persons. As such, the Applicants are unable to file the civil lawsuits
21 because the true identity of the Anonymous Individuals are unknown.
22

23 17. The Applicants are therefore seeking personal identifying information
24 (hereinafter “PII”) for the Anonymous Individuals through the discovery sought by the
25 Application in order to identify the true identity of the Anonymous Individuals to file the
26 civil lawsuits against the Anonymous Individuals.
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1 18. X is not, and will not be, a party or participant to the anticipated civil
2 lawsuits in Japan described above, and I am informed and believe that the information or
3 documents sought through discovery are held by it in the United States, and therefore, the
4 information or documents sought through discovery are outside the reach of a court of
5 Japan's jurisdiction.

6 19. Based upon my experience as a lawyer qualified to practice law in Japan, I
7 am not aware of any restrictions imposed by or any policies under the laws of Japan
8 limiting U.S. federal court judicial assistance for the purposes herein and in the
9 Application.

10 20. Based upon my experience as a lawyer qualified to practice law in Japan,
11 courts of Japan are receptive to assistance in discovery by U.S. federal courts, including
12 for discovery of PII of individuals publishing anonymously online.

13 21. The Applicants are not attempting to circumvent any foreign proof-
14 gathering restrictions or other policies of Japan or the United States.

15 22. Applicants seek the PII (names, addresses, email addresses, telephone
16 numbers, and payment information), but not credit card numbers, expiration dates or
17 validation codes) ever registered with the email accounts. The is necessary, because
18 based upon my experience as a lawyer qualified to practice law in Japan, a Anonymous
19 Individual may have not planned to engage in unlawful activity against an Applicant until
20 a time close to when the Anonymous Individuals engaged in the events at issue, and as
21 such, it is quite possible that the Anonymous Individuals may have used their true
22 identity until a time close to when the Anonymous Individual engaged in the unlawful
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1 activity. Additionally, recent PII is also relevant and necessary, because the Anonymous
2 Individuals may have not changed PII that is not displayed publicly.

3 23. Based upon my experience, where an online account is used for a
4 legitimate purpose, PII is only changed occasionally, and because this information is
5 stored by X in the ordinary course of its business, the burden placed upon each of them in
6 disclosing this information is minimal.

7
8 24. The discovery of PII requested is not unduly intrusive, because the request
9 is narrowly tailored to discover the true identity of the Anonymous Individuals, and is not
10 seeking other information.

11 25. Additionally, Applicants seek to obtain recent access logs for the accounts
12 of the Anonymous Individuals. I am informed and believe that the following is the reason
13 why access log (dates, times, IP addresses, and port numbers) of the Email Accounts
14 (hereinafter the “Recent Access Log”) is necessary, in addition to the PII, to identify the
15 Anonymous Individual:
16

- 17 a. In many cases, an Online Service Provider does not have accurate PII
18 that is sufficient to identify the true identity of the tortfeasor because
19 the Online Service Provider does not always require a user to record
20 his or her true name, address, e-mail address, telephone number, or
21 any other PII.
22
23 b. Where the tortfeasor created the email account to engage in unlawful
24 activities, because the PII disclosure is voluntary and by the tortfeasor,
25 most of the information obtained about the email account may be
26 fictitious.
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- c. As described below, an alternate path to identifying anonymous users is with a Remote Access Log.
- d. When the tortfeasor, the Anonymous Individual in this case, accesses the internet to access their email, the tortfeasor's electronic device (e.g., their laptop or smartphone) initially communicates with an Internet Service Provider ("ISP"). ISPs are the entities that provide internet access services to users. Examples of ISPs in the United States are AT&T and Verizon.
- e. Subsequently, the ISP communicates with the company providing online services (hereinafter the "Online Service Provider"), and the tortfeasor is thereby able to access their email account.
- f. In each communication, information such as an IP address, a port number, and a time stamp (the time when the specific communication occurred), may have been recorded, which records are commonly known as an "access log."
- g. The ISP assigns an IP address and a port number to the user when providing the user with internet access. An ISP is able to identify the user using the information in an access log because it has a record of to whom it assigned a certain IP address and port number at a certain time.
- h. ISPs may assign a different IP address and port number every time that a user accesses the internet, and therefore, the time and date that a

1 person was accessing the internet using the specific IP address and
2 port number is necessary.

- 3 i. In layman terms, an IP address is the street address of the user, while
4 the port number is the room number.
- 5 j. Initially, a victim of an unlawful act on the internet, such as the
6 Applicants, does not know the ISP of the user/tortfeasor, and therefore,
7 the victim needs for the Online Service Provider to disclose the access
8 log in its possession.
- 9 k. By obtaining the IP address from the Online Service Provider, the
10 victim is then able to identify the ISP used by the tortfeasor, because
11 the IP addresses owned by an ISP are publicly available information.
- 12 l. The victim can then provide the access log from the Online Service
13 Provider (the IP address, the port number, and timestamp) to the ISP,
14 and request identifying information such as the name and address of
15 the tortfeasor from the ISP tortfeasor in order to file a civil lawsuit
16 against the tortfeasor.
- 17 m. In order for an Applicant to identify the Anonymous Individual
18 through an ISP, both the IP address and a corresponding port number
19 and timestamp is necessary.
- 20 n. Without a corresponding timestamp, a court of Japan will not order an
21 ISP in Japan to disclose information, and an ISP in Japan will be
22 unable to pin-point the tortfeasor that was using the IP address at a
23 certain point-in-time.
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- 1 o. Additionally, where the port number is not disclosed, certain ISPs will
2 be unable to pin-point the tortfeasor that was using the IP address even
3 with a timestamp.
- 4 p. The port number is only used in conjunction with an IP address to
5 identify the ISP of the tortfeasor and is used by an ISP to pin-point
6 who was using a certain IP address and a certain port number on a
7 specific date and time, and therefore, a port number does not intrude
8 upon a person's privacy.
- 9 q. The timestamp only shows when a person accessed their online
10 account using a specific IP address and port number, does not disclose
11 what the person was doing using their online account, and therefore,
12 discovery of a timestamp only minimally intrudes upon a person's
13 privacy, and the evidentiary value of a timestamp in allowing the
14 victim to identify the tortfeasor far outweighs any privacy issues.
- 15 r. The destination IP address is the IP address of a website. Because of
16 the enormous volume of traffic that certain websites receive, some
17 websites are maintained on several IP addresses. Some ISPs in Japan
18 state that they cannot pinpoint the tortfeasor without the destination IP
19 address (in addition to the IP address, port number, and timestamp),
20 and therefore, if the Online Service Provider maintains the destination
21 IP address, this may be critical in identifying the tortfeasor.
- 22 s. Since the destination IP address is simply the IP address of a website
23 such as gmail.com, msn.com or paypal.com, disclosure of this
24 such as gmail.com, msn.com or paypal.com, disclosure of this
25 such as gmail.com, msn.com or paypal.com, disclosure of this
26 such as gmail.com, msn.com or paypal.com, disclosure of this
27 such as gmail.com, msn.com or paypal.com, disclosure of this
28 such as gmail.com, msn.com or paypal.com, disclosure of this

1 information by the Online Service Provider does not intrude upon a
2 person's privacy.

3 t. If an Online Service Provider keeps a complete access log indefinitely,
4 a victim can more readily identify the tortfeasor. However, in practice,
5 sufficient access log is not available because (i) the Online Service
6 Provider does not record a complete access log for all
7 communications, (ii) the Online Service Provider only keeps the
8 access log for a short period of time (usually for three to six months);
9 and (iii) a tortfeasor can use special anonymization computer programs
10 to prevent the victim from identifying the tortfeasor through the use of
11 the access log.
12

13 u. Because the access logs are often deleted by Online Service Providers
14 after several months, a recent access log is critical.
15

16 v. While a tortfeasor may be accessing the internet and the Online
17 Service Provider using an anonymization computer program at times,
18 they may have the program off at other times.

19 w. For the foregoing reasons, a recent access log for a reasonable period
20 of time is necessary because (i) the Online Service Provider may have
21 not recorded a complete access log if discovery is limited to a short
22 period of time, (ii) older access logs have likely been deleted, and (iii)
23 there is a possibility that the tortfeasor may have had his or her
24 anonymization computer program turned off.
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y. Therefore, for the foregoing reasons, it is reasonable to allow discovery of recent access log, and to not limit discovery to the period at or about the time that the unlawful statement was published.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on June 5, 2024.

Hiroyuki Nakajima

Exhibit 1

X Corp. doing business in California as, X Corp., a Nevada Corporation (5616182)



Request Certificate

<i>Initial Filing Date</i>	04/10/2023
<i>Status</i>	Active
<i>Standing - SOS</i>	Good
<i>Standing - FTB</i>	Good
<i>Standing - Agent</i>	Good
<i>Standing - VCFCF</i>	Good
<i>Formed In</i>	NEVADA
<i>Entity Type</i>	Stock Corporation - Out of State - Stock
<i>Principal Address</i>	1355 MARKET STREET, SUITE 900 SAN FRANCISCO, CA 94103
<i>Mailing Address</i>	1355 MARKET STREET, SUITE 900 SAN FRANCISCO, CA 94103
<i>Statement of Info Due Date</i>	04/30/2025
<i>Agent</i>	1505 Corporation C T CORPORATION SYSTEM
<i>CA Registered Corporate (1505) Agent Authorized Employee(s)</i>	AMANDA GARCIA 330 N BRAND BLVD, GLENDALE, CA GABRIELA SANCHEZ 330 N BRAND BLVD, GLENDALE, CA DAISY MONTENEGRO 330 N BRAND BLVD, GLENDALE, CA BEATRICE CASAREZ,